

EXHIBIT 8

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF CLARK

3
4 STATE OF WASHINGTON,)

5 Plaintiff,)

6 vs.)

No. 85-1 00007-2

7 CLYDE RAY SPENCER,)

8 Defendant.)

9
10 VERBATIM REPORT OF PROCEEDINGS

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17 Original

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20 May 3, 16 and 23, 1985

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7 CLYDE RAY SPENCER,)

8 Defendant.)

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10 VERBATIM REPORT OF PROCEEDINGS

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13 BE IT REMEMBERED that on the 3rd, 16th and
14 23rd days of May, 1985, the above-entitled and numbered
15 cause came regularly on for hearing before the
16 Honorable Thomas Lodge, one of the judges of the above-
17 entitled court, sitting in Department No. 3 thereof, at
18 the Clark County Courthouse, in the City of Vancouver,
19 County of Clark, State of Washington;

20 The plaintiff appeared through the Deputy
21 Prosecuting Attorney, JIM PETERS;

22 The defendant appeared in person and through
23 his attorney, JAMES RULLI.

24 WHEREUPON, both sides having announced they were
25 ready for hearing, the following proceedings were had, to-wit:

I N D E X

SECOND AMENDED INFORMATION: 2

CHANGE OF PLEA: 7

SENTENCING: 46

DEFENSE MOTION FOR EVALUATION: 53

MOTION DENIED: 53

May 3, 1985

THE COURT: State vs.

Clyde Ray Spencer. This comes on for filing of the Second Amended Information. What's the effect of the amendment?

MR. PETERS: Your Honor, we have been in Court several times, and I had mentioned on those occasions that there were additional counts forthcoming based upon Sharon Krause's interviews with the three children involved. Those interviews took place six weeks or so ago, and the substance of the interviews were delayed because Mrs. Krause was out of town because she was on vacation.

Those reports are now completed, and they reveal a substantial issue of inappropriate behavior being 16 counts comprising of an accumulation.

THE COURT: How many different victims?

MR. PETERS: There are three different victims. The complicity counts all involve allegations of the defendant having the children engage in activities with one another while he watched.

THE COURT: Now, the Spencer victims are his children?

MR. PETERS: That's right.

THE COURT: And Hansen?

1 MR. PETERS: The stepchild.

2 THE COURT: Any comments,

3 Mr. Rulli?

4 MR. RULLI: Your Honor, Count
5 XIII and XIV don't state any dates. I don't know how we're
6 suppose to enter pleas to those.

7 THE COURT: That's correct.

8 MR. PETERS: I'm sorry.

9 THE COURT: Do you have those
10 dates?

11 MR. PETERS: It would be the same
12 as those in Count XII, that is between July 14, '84 and
13 August 26, '84. That's my error in dictation, I'm sorry.

14 MR. RULLI: The same date and
15 time as Count XII?

16 MR. PETERS: Yes.

17 THE COURT: Okay, Mr. Spencer,
18 do you understand these new charges?

19 MR. RULLI: Your Honor, he hasn't
20 had an opportunity to review the additional charges. I only
21 spoke with him before I came in. I think I should have time
22 to talk to my client about it.

23 THE COURT: You mean recess now,
24 or do it some other day or what?

25 MR. RULLI: Do it some other day

1 if we have to.

2 MR. PETERS: We don't object.

3 THE COURT: Well, we can do it
4 next Friday on the docket as far as that goes.

5 MR. PETERS: Your Honor, my only
6 reason for putting it on today is because for some weeks we
7 have been prepared to do it, and I don't seem to be going
8 anywhere else with the case, so I think it should be filed.

9 MR. RULLI: I would ask Your
10 Honor that you continue to your next Friday's docket.

11 THE COURT: Friday, May 10th, at
12 1:30.

13 MR. RULLI: Your Honor, when this
14 case first came to our attention I requested an opportunity
15 to interview the victim. At that time you either said that
16 I would go to California and depose him there or they will
17 be brought up here. That doesn't give me ample opportunity
18 for me to interview them because we have a May 20th date set
19 now, which doesn't give me a lot of time. I have got other
20 trials set between that date and today. I'm asking that the
21 children be brought up here next week so I can have an
22 opportunity to talk to them.

23 MR. PETERS: They were brought
24 up about six weeks ago. Mr. Rulli was called. He was out
25 of town. He certainly should have an opportunity to

1 interview. One of them is here in Clark County and is
2 available.

3 THE COURT: Which one?

4 MR. PETERS: Matthew Hansen. The
5 other two, they have been back and they were available.

6 MR. RULLI: I don't know how
7 they're available if I'm not sure when they're here.

8 THE COURT: Either you're going
9 to have to go down there or they'll have to come up here.

10 MR. RULLI: If the Court will
11 authorize funds, I have no objections.

12 MR. PETERS: Do we have any
13 choice?

14 THE COURT: That's fine.

15 MR. RULLI: Authorize them to
16 come or me to go?

17 THE COURT: Well, let's try to
18 do what's the most economical and less inconvenient for
19 them. I don't care. We have a facility here if they come
20 here, now, where you can do your homework. If you go there,
21 I suppose you're looking for space in Sacramento County or
22 Placer or whatever county that is. Are you talking about
23 just yourself or is this ----

24 MR. RULLI: I don't know if
25 Mr. Peters wants to be there or not.

1 MR. PETERS: Let's try to bring
2 them up, that's probably the most expeditious because we'll
3 both be here.

4 THE COURT: I'll go either way,
5 you two can talk about it and I'll sign the appropriate
6 order send you down there, or bring them up here.

7 MR. PETERS: The children, I
8 believe, are nine or five and six, if they come up, it will
9 also involve the mother.

10 THE COURT: Thank you.

11 (Hearing concluded)

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May 16, 1985

CHANGE OF PLEA

THE COURT: State vs. Spencer.

I think this is the latest amended, Second Amended Information that was filed on May 3, 1985. As I understand it based upon this Motion and Order of Dismissal that Mr. Peters has presented on behalf of the Prosecutor's Office, Mr. Spencer proposed to plead guilty to all of the counts except IV, V and VI, VIII and XI. So he would be pleading guilty to the 11 remaining counts, is that right?

MR. RULLI: That's correct, Your Honor.

THE COURT: Also I understand that this is proposed to be an Alfred or Newton plea, is that right?

MR. RULLI: That's correct.

THE COURT: Okay. Mr. Spencer, you still have the right to remain silent. Do you understand that you don't have to plead guilty, or even discuss the plea of guilty if you don't want?

MR. SPENCER: Yes, sir, I understand.

THE COURT: And have you prepared

1 and gone over this Plea Statement with your attorney,
2 Mr. Rulli?

3 MR. SPENCER: Yes, sir.

4 THE COURT: Do you feel you
5 understand everything that is in it?

6 MR. SPENCER: Yes, sir.

7 THE COURT: I'm going to go
8 through it with you in detail. If you have any questions,
9 just ask and we will try to answer them.

10 You're thirty-seven years of age. You have two years
11 of post-high school education, is that correct?

12 MR. SPENCER: Yeah, I have four
13 years.

14 THE COURT: Sixteen total years
15 of education, right?

16 MR. SPENCER: Yes, sir.

17 THE COURT: Okay. Now, you're
18 familiar with the Second Amended Information, and you have
19 read all of the charges, correct?

20 MR. SPENCER: Yes, sir.

21 THE COURT: Do you understand
22 that you do have the right to a speedy, public trial by
23 jury, and that trial is set for Monday, May 20th, at
24 9 o'clock?

25 MR. SPENCER: (Nodding head)

1 THE COURT: And during the course
2 of these proceedings, the original charges, I believe, were
3 filed on January 3, 1985. The case was originally set for
4 trial on February 27th, 1985. You and Mr. Rulli asked for
5 a continuance, and a continuance was granted, and you did
6 execute a Waiver of Speedy Trial. Is that correct?

7 MR. SPENCER: Yes, sir.

8 THE COURT: The case was then set
9 for trial on April 17th, 1985. Somewhere in that time period
10 additional charges were filed by the Prosecutor, and, again,
11 your attorney and you requested a continuance to adequately
12 prepare for the additional charges. And you executed a
13 Waiver of Speedy Trial on March 14th, 1985, correct?

14 MR. SPENCER: That's correct.

15 THE COURT: The case was then set
16 for trial on May 20th, and between then and May 3rd, the
17 Second Amended Information was filed. Now, if you did
18 proceed to trial, you have the right to remain silent; the
19 right to confront any witnesses called by the State to
20 testify against you; the right to have witnesses produced
21 at public expense, if you were unable to get your witnesses
22 here.

23 You would be entitled to the presumption of innocence.
24 The State would have to prove you're guilty beyond a
25 reasonable doubt.

1 What the State has to prove, or what we call the elements
2 of the crime, I'll go through those with you one by one.
3 Even if you lost the trial, you could appeal to the Court of
4 Appeals and/or the Supreme Court to review any errors that
5 you felt were committed at the time of trial. If you plead
6 guilty, of course, you give up your trial rights. Do you
7 have any questions about that?

8 MR. SPENCER: No, sir.

9 THE COURT: Do you feel you
10 understand your trial rights?

11 MR. SPENCER: Yes, sir.

12 THE COURT: Okay. With respect
13 to Count I, the State alleges and would have to prove beyond
14 a reasonable doubt that you, Clyde Ray Spencer, in Clark
15 County, Washington, during the summer of 1983, at a time
16 that you were over thirteen years of age, did engage in
17 sexual intercourse with Kathryn E. Spencer, who was less
18 than eleven years of age.

19 Sexual intercourse would involve some penetration of
20 the vagina of the victim in some fashion by you by person
21 or instrument, is that correct?

22 MR. PETERS: Or rectum or any
23 oral contact with her involving his genitals, or he involving
24 her genitals.

25 THE COURT: That's correct.

1 Now, Count II, Clyde Ray Spencer, Clark County, State
2 of Washington, again during the summer of 1983, did engage
3 in sexual intercourse, same definition, at a time that you
4 were over thirteen and the victim was less than eleven. The
5 victim alleged, Matthew Ray Spencer.

6 Count III, again yourself, Clark County, Washington, on
7 one or more occasions between July 14, 1984 and August 26,
8 1984, at a time when you were over thirteen years of age, did
9 engage in sexual intercourse by placing your penis or finger
10 in Kathryn E. Spencer's vagina or rectum when she was less
11 than eleven years of age.

12 Count V, again, yourself ----

13 MR. PETERS: That's dismissed,
14 Your Honor. IV, V and VI are part of the plea bargain.

15 THE COURT: Okay, moving on to
16 VII, that you, Clyde Ray Spencer in Clark County on or about
17 or between July 14th and August 26th, 1984, at a time when
18 you were over thirteen years of age, engaged in sexual
19 intercourse by placing your penis or finger in the rectum of
20 Matthew Ray Spencer at a time when the victim was less than
21 eleven years of age. Count VIII, that you,
22 Clyde Ray Spencer ----

23 MR. PETERS: Count VIII is
24 dismissed.

25 THE COURT: VIII is another one.

1 MR. PETERS: Your Honor, number
2 IX is a complicity or accomplice count. Basically the
3 allegation -- I know we need to read the elements. For the
4 Court's information, the allegation is that Mr. Spencer was
5 having the children, making the children perform sexual acts
6 with one another as he looked on.

7 THE COURT: Okay. What the
8 information charges is the State would have to prove beyond
9 a reasonable doubt would be that between July 14 and
10 August 26, 1984, at a time that you were over thirteen years
11 of age, you did act with the kind of culpability that is
12 sufficient for the commission of the crime of Statutory Rape
13 in the First Degree, did cause Matthew Ray Spencer, an
14 innocent or irresponsible person, to engage in such conduct,
15 or, with knowledge that it would promote or facilitate the
16 commission of the crime of Statutory Rape in the First Degree,
17 did solicit, command, encourage or request Matthew Ray Spencer
18 to commit it by engaging in sexual intercourse with
19 Kathryn E. Spencer, who was less than eleven years of age,
20 by placing his fingers in her rectum in violation of the law
21 of the State of Washington.

22 Count X, Clyde Ray Spencer, Clark County, between
23 July 14 and August 26, 1984, at the same time when you were
24 over thirteen years of age, acting with the kind of
25 culpability that is sufficient for the commission of the

1 crime of Statutory Rape in the First Degree, did cause
2 Matthew Ray Spencer, an innocent or irresponsible person, to
3 engage in such conduct, or, with knowledge that it would
4 promote or facilitate the commission of the crime of
5 Statutory Rape in the First Degree, did solicit, command,
6 encourage or request Matthew Ray Spencer to commit it, by
7 engaging in sexual intercourse with Matthew Hansen, who was
8 less than eleven years of age, to-wit: By placing his
9 fingers in Matthew Hansen's rectum or by committing
10 fellatio on Matthew Hansen, in violation of State Law of the
11 State of Washington.

12 Count XII, Clyde Ray Spencer, Clark County, Washington,
13 did on one or more occasions between July 14th and August 26th
14 1984, being a person over thirteen years of age, engage in
15 sexual intercourse with Matthew Hansen, a person who is less
16 than eleven years of age, to-wit: By causing him to place
17 his fingers in the defendant's rectum.

18 MR. PETERS: The next two counts,
19 Your Honor, you'll recall at arraignment you added the dates.
20 Those were inadvertently omitted.

21 THE COURT: Count XIII, in that
22 Clyde Ray Spencer, in Clark County, Washington, between
23 July 14th and August 26th, 1984, acting with the kind of
24 culpability that is sufficient for the commission of the
25 crime of Statutory Rape in the First Degree, did cause

1 Matthew Hansen, an innocent or irresponsible person, to
2 engage in such conduct, or with knowledge that it would
3 promote or facilitate the commission of the crime of
4 Statutory Rape in the First Degree, did solicit, command,
5 encourage, or request Matthew Hansen to commit it, by engaging
6 in sexual intercourse with Matthew Ray Spencer, who was less
7 than eleven years of age, to-wit: By placing his thumb in
8 Matthew Ray Spencer's rectum and/or by placing his penis in
9 his rectum in violation of the law of the State of Washington.

10 Count XIV, Clyde Ray Spencer, Clark County, Washington,
11 between July 14th and August 26th, 1984, at a time when you
12 were more than thirteen years of age, acting with the kind
13 of culpability that is sufficient for the commission of the
14 crime of Statutory Rape in the First Degree, did cause
15 Matthew Hansen, an innocent or irresponsible person, to
16 engage in such conduct, or with knowledge that it would
17 promote or facilitate the commission of the crime of
18 Statutory Rape in the First Degree, did solicit, command,
19 encourage, or request Matthew Hansen to commit it, by
20 engaging in sexual intercourse with Kathryn E. Spencer,
21 who was less than eleven years of age.

22 Count XV, Clyde Ray Spencer, Clark County, State of
23 Washington, on or about an unknown date between August 27
24 and December 25, 1984, at a time when you were over thirteen
25 years of age, did engage in sexual intercourse with

1 Matthew Hansen, who was less than eleven years of age.

2 Count XVI, Clyde Ray Spencer, Clark County, Washington,
3 on or about the 16th day of February, 1985, at a time that
4 you were over thirteen years of age, did engage in sexual
5 intercourse with Matthew Hansen, who was less than eleven
6 years of age.

7 Those are the legal elements that the State would have
8 to prove to a jury beyond a reasonable doubt. The jury would
9 have to take each count separately, make a decision on each
10 count and they would be instructed that they couldn't
11 cumulate the evidence from one count to prove that you were
12 guilty of other counts.

13 Any questions about what the State would have to prove
14 at the time of trial?

15 MR. SPENCER: No, sir.

16 THE COURT: As far as any
17 recommendation by the Prosecutor in the plea bargaining
18 process, the Prosecutor makes no commitment other than to
19 recommend that you do be sent to the Department of
20 Corrections. Is that correct?

21 MR. SPENCER: Yes, sir.

22 MR. RULLI: And, of course, a
23 dismissal of the five counts, Your Honor.

24 THE COURT: The five counts that
25 we have talked about.

1 Has anybody made any threats or promises of any kind
2 that we haven't talked about to you to cause you to plead
3 guilty?

4 MR. SPENCER: No, sir.

5 THE COURT: Would any plea that
6 you made today be made freely and voluntarily?

7 MR. SPENCER: Yes, sir.

8 THE COURT: As far as sentencing
9 goes, the sentencing range would be based upon the fact that
10 you have no criminal history and you would be required then
11 to sign a statement stating that you have no criminal history,
12 is that correct?

13 MR. SPENCER: Yes, sir.

14 THE COURT: If it turns out that
15 there were a criminal history, then the Prosecutor could
16 change any recommendation made and the sentencing range could
17 increase. According to the Offender's Scoring Sheet
18 Statutory Rape in the First Degree, you would have an
19 offender's score of 16, which would put you at the top of
20 the sentencing range, 129 to 171 months is the top of the
21 range.

22 MR. PETERS: That's right, and
23 in addition to that, Your Honor, there are Counts I and II
24 that are pre-SRA and the maximum on those are 20 to life,
25 with five -- Excuse me, fifty thousand dollar fine maximum

1 on each, that was not stated, I might indicate, in item five
2 where it usually is.

3 But the maximum on all of these is 20 to life and
4 fifty thousand dollar fine.

5 THE COURT: Okay. Even though
6 under the new Sentencing Reform Act we talk about ranges as
7 a matter of maximums, these are 20 to life counts and the
8 two that are under the pre-SRA Act, or Sentencing Reform Act
9 do carry 20 to life.

10 So the Judge is bound to sentence you to not less than
11 20 and could sentence you up to life. Any time set by the
12 Judge in the pre-SRA cases would serve as a maximum and the
13 Board of Prison Terms and Paroles would set the minimum time,
14 or the release date.

15 As far as the SRA cases, I mean counts, those would
16 be -- You would have to serve the time indicated or set by
17 the Judge less the possibility of good time which could be
18 up to one third off.

19 MR. PETERS: And credit for time
20 served.

21 THE COURT: Credit for time
22 served.

23 The Court does have the authority to, under certain
24 circumstances, to go outside of the standard sentencing
25 range, either go under or above the range and the Court does

1 not have to follow any recommendation with respect to the
2 sentence within the standard range. So, even, for example,
3 if the Prosecutor recommended the minimum within the range,
4 the Court could still give you the maximum.

5 Also, this may be academic, but it's on the form, you
6 could be required to pay restitution, court costs, a fine,
7 attorney's fees, and victim's compensation assessment.

8 Also, as Mr. Peters said, each one of these carries up
9 to a fifty thousand dollar fine.

10 Now, if you're not a United States citizen, you could
11 be deported to your home country if you plead guilty to a
12 felony, which either of these counts is.

13 And if you did have a criminal history and you were on
14 probation or parole, a plea of guilty here would be the
15 basis to revoke probation or parole. Any questions so far?

16 MR. SPENCER: No, sir.

17 THE COURT: Now, as I understand
18 it, you do not admit that you committed any of these
19 offenses, is that correct?

20 MR. SPENCER: That's correct.

21 THE COURT: But you have reviewed
22 the State's evidence with Mr. Rulli on each count, is that
23 correct?

24 MR. SPENCER: Yes, sir.

25 THE COURT: And you do feel that

1 if the State's evidence were presented to the jury and you
2 presented whatever defense you might have, that the jury
3 would find you guilty to each count beyond a reasonable
4 doubt?

5 MR. SPENCER: That's correct.

6 THE COURT: Do you have any
7 question in your mind about that?

8 MR. SPENCER: No, sir.

9 THE COURT: Have you considered
10 in entering this type of plea, that is a plea without
11 admitting guilt, that the fact that the Prosecutor has in
12 effect dropped five of the sixteen counts?

13 MR. SPENCER: Yes, sir.

14 THE COURT: Has that been some
15 inducement for you to enter your plea?

16 MR. SPENCER: Yes, sir.

17 THE COURT: Okay. Why are you
18 entering a plea without admitting guilt?

19 MR. SPENCER: Because I don't
20 remember the crimes.

21 THE COURT: You don't remember
22 the crimes?

23 MR. SPENCER: That's correct.

24 THE COURT: You think you're
25 blocking them out now, or do you know?

1 MR. SPENCER: Well, I have taken
2 every test they have got and they can't find anything, if
3 I'm suppressing down deep.

4 THE COURT: Is there any type
5 of defense based upon his capacity?

6 MR. RULLI: Your Honor, I have
7 had Mr. Spencer examined by Dr. McGovern and by
8 Dr. Hank Dixon, two psychiatrists, and both doctors
9 concluded that he has his full capacity about him. We do
10 not have any insanity or diminished capacity defense; that
11 he was not under the influence of any alcohol or drugs at
12 the time of these alleged offenses.

13 THE COURT: That's correct, was
14 there any alcohol or drugs involved or anything that might
15 have affected your mental capacity?

16 MR. SPENCER: No, sir.

17 THE COURT: So you feel that
18 based upon the doctor's evaluations and opinions, that you
19 and Mr. Rulli's advice that you can present no legal defenses
20 to the charges?

21 MR. SPENCER: That's correct.

22 THE COURT: All right, I'm going
23 to have the Prosecutor now go through the State's evidence
24 because I have to be able to make a determination that there
25 is sufficient evidence for the jury to reach a verdict beyond

1 a reasonable doubt. Mr. Peters.

2 MR. PETERS: Your Honor, if I
3 may, I would like to ask Deputy Sharon Krause of the
4 Sheriff's Office to approach the bench and assist me. I
5 have personally interviewed each of these children as has
6 Mr. Rulli in my presence with the exception of one of the
7 victims he interviewed with Mrs. Krause yesterday, I believe.
8 But she's interviewed them in much more depth than I have.
9 There may be some things that she can add that I missed.

10 So, if she would with the Court's permission, step
11 forward.

12 THE COURT: All right. Fine.
13 Mr. Rulli, is there any question in your mind that the jury
14 if presented the evidence the State has would convict
15 Mr. Spencer?

16 MR. RULLI: I have no doubt,
17 Your Honor.

18 THE COURT: All right.
19 Deputy Krause or Mr. Peters.

20 MR. PETERS: With respect to
21 Count I and Count II, Your Honor. Count I and II involved
22 indecent liberties that occurred to Kathryn Spencer and
23 Matthew Spencer. Both of the children are the natural
24 children of Ray Spencer. Kathryn now is six, I believe,
25 and Matthew is nine.

1 These two children describe having been in Clark County,
2 Washington during the summer of 1983 to visit their father
3 at the brown house where he lived. We have evidence that
4 Mr. Spencer in fact did reside at that time, that being the
5 summer of 1983, in a brown house here in Clark County,
6 Washington.

7 They both describe numerous incidents of sexual contact
8 between themselves and their father involving penetration
9 in both cases, of their rectum, involving oral sex on both
10 cases. This occurred on numerous occasions during the
11 summer.

12 Also, involving contact with Kathryn's genitals, by
13 Mr. Spencer.

14 Can you remember other details, Mrs. Krause?

15 THE COURT: Those are Counts I
16 and II?

17 MR. PETERS: That's Count I and
18 II, both children described having observed these behaviors
19 with one another, in other words, they corroborate each
20 other.

21 THE COURT: Do you have any
22 basis to refute the testimony of the kids relative to those
23 Counts, I and II?

24 MR. SPENCER: No, sir.

25 THE COURT: Do you feel they're

1 sufficiently competent, or that the jury would accept their
2 versions of what happened?

3 MR. SPENCER: Yes, sir.

4 MR. PETERS: I might indicate,
5 Your Honor, that Mr. Spencer is thirty-seven years of age,
6 which is one of the elements that we have to prove, and he's
7 acknowledged that here and he's obviously over thirteen from
8 looking at him here.

9 THE COURT: Okay.

10 MR. PETERS: Count III, Your
11 Honor, the victim here is Kathryn Spencer. Again, she's at
12 this time six years old. This occurred last summer. We have
13 alleged between July 14th, '84 and August 26th, '84. The
14 reason for those dates is that Kathryn came to Clark County
15 from Sacramento where she resides with her mother for a
16 summer visit with her father, Ray Spencer, on July 14th.
17 And returned, according to the evidence from -- that would
18 be provided by her mother as well as Clyde Spencer that it
19 was August 26, 1984.

20 Obviously Mr. Spencer continues to be over thirteen
21 years of age, he engaged in sexual intercourse and our
22 theory would indicate there was numerous occasions during
23 the summer. She as well as her brother, Matthew and her
24 stepbrother Matthew Hansen observed these incidents.

25 Again, most of these incidents occurred with all three

1 children being present in Mr. Spencer's house, which he
2 shared with his wife, Shirley, on Lucia Falls Road. Most
3 of the incidents occurring in the bedroom of the house. But
4 they also occurred in the shower and in the living room, and
5 in one other bathroom in the house.

6 Kathryn indicates to myself, to Mr. Rulli and Mrs. Krause
7 that he placed his penis or finger in her rectum, and that
8 he placed his penis or finger in or about the area of her
9 vagina, but she was very clear about pain upon these
10 penetrations, that she cried, the other children are clear
11 that she cried from the pain. And she's very clear about
12 the penetration of her rectum in any case. I think that's
13 all.

14 THE COURT: Do you have any
15 basis to refute the Prosecutor's case with respect to
16 Count III?

17 MR. SPENCER: No, sir.

18 MR. PETERS: Count No. VII, Your
19 Honor, involves the victim, Matthew Ray Spencer, involves
20 the same time frame that is mentioned in the previous count,
21 that would be Count III, July 14th to August 26th, 1984.

22 Matthew Spencer is the nine-year old son of Ray Spencer,
23 natural son. He came up during that time frame to visit
24 his father. When Mr. Rulli and I spoke with Matthew in
25 Sacramento last week, he was clear about having been here

1 during that time frame. He in response to one of Mr. Rulli's
2 questions, he remembered that he spent the Fourth of July,
3 the firecracker time as he described, in Sacramento. He
4 remembers the previous summer of having spent firecracker
5 time up here in Clark County and having gone to the fireworks
6 at Fort Vancouver. So he was able to differentiate one
7 summer from the other.

8 He indicated to us that on numerous occasions during
9 last summer on the dates stated, there was sexual contact
10 with his father, that is his father would place his penis or
11 finger in the rectum of Matthew Spencer, who, as I said, is
12 nine. He was able to describe the difference between a
13 flaccid and an erect penis, indicating that when these events
14 occurred, his father's penis was hard and caused him a great
15 deal of pain when he penetrated his rectum. He also
16 indicated he was crying when these occurred.

17 His statements were corroborated by his stepbrother,
18 Matthew Hansen, and his sister, Kathryn.

19 THE COURT: That was VII?

20 MR. PETERS: That was VII.

21 THE COURT: Do you have any basis
22 to refute Count VII's evidence by the State?

23 MR. SPENCER: No, sir.

24 MR. PETERS: Your Honor, Count IX,
25 the count of complicity or another word would be accomplice

1 to Statutory Rape in the First Degree. The proof that we
2 would have offered if we had gone to trial would involve the
3 three children's testimony that between July 14th and
4 August 26th, 1984, Mr. Spencer, who was then obviously over
5 thirteen, caused these children in the instance of Count No.
6 IX, Matthew Spencer, himself five years old -- Excuse me,
7 nine years, Matthew Spencer, to engage in sexual intercourse
8 with his sister, Kathryn, who was six.

9 The children said, or would say or would testify that
10 their father made them do this with one another. Matthew
11 would testify and Kathryn will testify that their father
12 made them engage in this behavior as he looked on, and on
13 some occasions took photographs.

14 THE COURT: Were any of those
15 recovered?

16 MR. PETERS: No, there hasn't
17 been a search warrant executed, Your Honor, although we have
18 been advised by Shirley Spencer that she has searched the
19 house. She's been cooperative. There was no search warrant
20 executed. She has searched the house, and a number of items
21 of pornography were discovered, books involving descriptions
22 of incest and sexual behavior between adults and children.
23 But no photographs involving these children were discovered.

24 In any case, Matthew and Kathryn would both testify
25 that Ray did solicit, command, request, or encourage Matthew

1 to engage in sexual intercourse with Kathryn by having
2 Matthew place his fingers into her rectum with Ray and the
3 other child, Matthew Hansen, looking on. Again, all three
4 children are corroborative of one another.

5 THE COURT: Do you have any basis
6 to refute Count IX's evidence?

7 MR. SPENCER: No, sir.

8 MR. PETERS: Count X, Your Honor,
9 is basically the same type of interaction, except that the
10 victims are different. It's the same date, last summer,
11 July 14th to August 26th, 1984, and basically the children
12 again would testify, that is the two named children as well
13 as Kathryn Spencer, that the defendant caused them, or in
14 their words, made them engage in sexual behavior, and in
15 this particular case, Matthew Ray Spencer, age nine to engage
16 in sexual intercourse with Matthew Hansen, who was age five
17 at that time, by having Matthew place his finger in
18 Matthew Hansen's rectum, and by having Matthew Spencer place
19 his penis in Matthew Hansen's -- Excuse me, mouth on
20 Matthew Hansen's penis.

21 Again, the facts are corroborated by all three children.

22 THE COURT: Any defense to
23 Count X?

24 MR. SPENCER: No, sir.

25 MR. PETERS: Count No. XI is the

1 same dates, July 14th, August 26th.

2 MR. RULLI: Count XII.

3 MR. PETERS: Yes, Count XII. The
4 State would offer proof that Mr. Spencer, the defendant, was
5 over the age of thirteen at that time. That he engaged in
6 sexual intercourse with Matthew Hansen, again, who is five
7 years old, by having Matthew Hansen place his finger in
8 defendant's rectum.

9 Your Honor, the children will testify as to all of these
10 counts, and we would have corroborative information from
11 Mr. Spencer's police department work records as well as from
12 Shirley Spencer and her work records that Shirley, the
13 mother of Matthew Hansen and the wife of the defendant, was
14 working multiple shifts during last summer. She works for
15 C-Tran and was working as a relief driver, and was gone
16 sometimes in the early morning, sometimes during the day and
17 sometimes in the evening.

18 Mr. Spencer, who was a police officer at the time, was
19 working five days on, two days off followed by five days on,
20 three days off shift, and his work records indicate that he
21 took multiple sick-vacation and comp time days off last
22 summer in addition to the normal days off that he had,
23 presumably to spend time with his children.

24 The testimony would be that he had access to them on
25 numerous days when his wife was not present. The children

1 would also testify to that and indicate that on virtually
2 everyday or almost everyday that their father was alone with
3 them, he would engage in these sexual behaviors.

4 So, as to Count XII, we have charged that on numerous
5 occasions during that period of time there was sexual
6 intercourse between the defendant and six-year old Matt Hansen
7 by having Matt cause -- Excuse me, by causing the defendant,
8 causing Matt to place his finger in the defendant's rectum.
9 I believe I stated the ages, didn't I?

10 THE COURT: Any defense to
11 Count XII?

12 MR. SPENCER: No, sir.

13 MR. PETERS: Count XIII, Your
14 Honor, is another count of complicity, this time involving
15 Matt Hansen, the person who is the so-called, if you would,
16 perpetrator, albeit innocent perpetrator, he's six years
17 old, and he would testify that on one or more occasions
18 during the time period between July 14th and August 26th,
19 1984, he was forced or caused, or made by his father, the
20 defendant -- stepfather, the defendant, to engage in sexual
21 intercourse with the defendant's natural son,
22 Matthew Ray Spencer, who was nine at the time, by the
23 defendant causing Matthew Hansen to place his thumb in
24 Matthew Spencer's rectum, and by placing his penis in
25 Matthew Spencer's rectum.

1 Again, our theory there was complicity to commit
2 Statutory Rape in the First Degree.

3 THE COURT: Any defense to
4 Count XIII?

5 MR. SPENCER: No, sir.

6 MR. PETERS: Count No. XIV, Your
7 Honor, involves the defendant again being over thirteen years
8 of age, involving himself with two innocent children,
9 Matthew Hansen, age five, and Kathryn Spencer, age six,
10 causing them to have sexual contact with one another,
11 actually sex with him, and of course with one another.
12 Again, during this time frame between July 14th, August 26th,
13 1984 on one or more occasions, Matthew Hansen, and
14 Kathryn Spencer will testify that then the defendant had
15 Matthew Hansen engage in sexual intercourse with
16 Kathryn Spencer.

17 Mrs. Krause, would you relate what the children told
18 you about how that occurred, that would be Matthew Hansen
19 when Matthew Hansen was doing the things to Kathryn Spencer.

20 DEPUTY KRAUSE: Matthew Hansen
21 indicates that he had to insert his finger into Kathryn's
22 rectum, and also place his mouth on Kathryn's vagina, and
23 that Kathryn had to do those same acts to him by placing her
24 mouth on his penis.

25 THE COURT: Any defense to

1 Count XIV?

2 MR. SPENCER: No, sir.

3 MR. PETERS: I might add all
4 these counts up to this point in addition to the next last
5 two counts occurred at Mr. Spencer's home on Lucia Falls
6 Road in Clark County, Washington.

7 THE COURT: Okay.

8 MR. PETERS: With one exception,
9 that is the last count, No. XV occurred in the house that I
10 indicated involves the defendant on an unknown date between
11 August 27th and December 25th, 1984.

12 Now, the Court will note this is a different period of
13 time. The defendant engaged in sexual intercourse with
14 Matthew Hansen.

15 Mrs. Krause's interview as well as -- or contacts with
16 Matthew Hansen indicate that this behavior took place after
17 the two California children, Kathryn and Matthew Ray Spencer
18 returned to Sacramento. They returned on August 26th,
19 therefore the beginning date of this time frame is August 27th.

20 Matthew Hansen further indicated this behavior took
21 place prior to Christmas and the concluding date being
22 December 25th, and what he indicated was that on that
23 occasion his father was giving him a bubble bath and he was
24 in the bubble bath with him, is that correct?

25 DEPUTY KRAUSE: That's correct.

1 MR. PETERS: And he forced
2 Matthew's head down under the water through the bubbles onto
3 the defendant's erect penis.

4 The way this count was discovered was that young
5 Matthew reacted -- Who had always enjoyed bubble baths,
6 reacted very violently when his mother, Shirley Spencer,
7 the defendant's wife, attempted to give him a bubble bath.
8 That prompted questioning by her and statements, which we
9 believe would have been admissible under the hearsay
10 exception 98.44.120 regarding his stepfather causing him to
11 perform fellatio on him during that period of time, again,
12 when Matthew was approximately five years old.

13 THE COURT: Any defense to
14 Count XV?

15 MR. SPENCER: No, sir.

16 MR. PETERS: Your Honor, the
17 last count, Count XVI occurred after Mr. Spencer was
18 originally charged with one or more counts under this
19 cause number. It is alleged to have taken place
20 February 16th, 1985. This is the one and only offense that
21 did not take place in the Lucia Falls home that we're aware
22 of. This offense took place at a motel on Highway 99 in
23 Clark County where Mr. Spencer was staying after he had been
24 released by Your Honor.

25 What happened in this particular case and the way that

1 we're able to verify the date, first of all, by the motel
2 receipt from when Mr. Spencer was staying at the motel.

3 Second, Mrs. Shirley Spencer would testify that she
4 took her son, Matthew Hansen, age five, to this motel to
5 stay, to see his stepfather while she was working.

6 Mr. Spencer, the defendant, asked to have Matthew stay
7 overnight with him for a visit, and that during that visit,
8 Matthew would be prepared to testify that the defendant
9 engaged in oral sex with him and penetrated his rectum with
10 his penis, that is the defendant penetrated the boy's rectum
11 with his penis.

12 Additional corroboration of that was obtained first of
13 all by statements that the boy made to his mother. Secondly,
14 the boy's detailed description that the boy was able to give
15 of this motel room which was somewhat unique.

16 The police then went out and corroborated the fact that
17 the description he gave of the motel room was in fact
18 accurate.

19 THE COURT: At that time he was
20 only charged with assaulting or with abusing Kathryn?

21 MR. PETERS: That's right.
22 There was no knowledge at that time that he had in fact
23 engaged in any behavior with his children.

24 THE COURT: Any defense to
25 Count XVI?

1 MR. SPENCER: No, sir.

2 THE COURT: Mr. Rulli, do you
3 agree that you would be able to present no defense to any
4 of the counts?

5 MR. RULLI: Yes, Your Honor.

6 THE COURT: So, you would just
7 be putting the State to it's test if it went to trial?

8 MR. SPENCER: Yes, sir.

9 THE COURT: Did you anticipate
10 putting on any defense witnesses?

11 MR. RULLI: No.

12 THE COURT: Do you agree?

13 MR. SPENCER: Yes, sir.

14 MR. PETERS: I might indicate,
15 Your Honor, we planned in addition to the proof of these
16 behaviors calling the mothers of both children to describe
17 a series of unusual behaviors and symptoms exhibited by the
18 children. The details of which, I guess, are not
19 particularly necessary right now, but we were also prepared
20 to call an expert witness, a counselor who deals almost
21 exclusively with sexually abused children, by the name of
22 Patricia Walker, to testify that these behaviors or symptoms
23 are consistent with and typically seen in children who have
24 had serious trauma or a serious, dramatic event in their
25 lives. They're consistent with those things seen in children

1 who have been sexually abused.

2 THE COURT: Well, based upon the
3 evidence that would be presented by the State as reviewed by
4 Mr. Peters, it does appear there's overwhelming evidence from
5 which a jury could, and likely would, conclude beyond a
6 reasonable doubt that Mr. Spencer is guilty of Count I, II,
7 III, VII, IX, X, XII, XIII, XIV, XV, XVI in the Second
8 Amended Information.

9 Mr. Spencer, with respect to each of those counts, do
10 you propose to enter the same pleas?

11 MR. SPENCER: Yes, sir.

12 THE COURT: What is that plea?

13 MR. SPENCER: Guilty.

14 THE COURT: Do you have any
15 questions at all about this procedure?

16 MR. SPENCER: No, sir.

17 THE COURT: Do you feel that you
18 were adequately represented by Mr. Rulli and that Mr. Rulli
19 has, as far as you're concerned, made a maximum legal effort
20 to explore any defenses you might have whether for mental
21 as well as any factual defenses?

22 MR. SPENCER: Yes, sir.

23 THE COURT: Do you have any
24 questions at all about his representation?

25 MR. SPENCER: No, sir.

1 THE COURT: Do you think that
2 he's adequately, fairly and on your behalf presented to you
3 your options relative to pleading guilty versus going to
4 trial?

5 MR. SPENCER: Yes, sir.

6 MR. PETERS: Your Honor, I might
7 indicate for the record in case this matter is reviewed, it
8 is, I think, important to note that Mr. Spencer was, at the
9 time of these offenses, a Vancouver Police Officer and had
10 been for the previous five or six years approximately; prior
11 to that was involved as a law enforcement officer in
12 California, and has considerable experience with the system.

13 THE COURT: Are there any
14 statements made that would have required preliminary hearings?

15 MR. PETERS: Well, there was one
16 series of statements after his arrest in February,
17 February 18th, I believe, where we would have had to have
18 had a 3.5 Hearing. It was not the sort of statement that is
19 a classic admission, but Mr. Spencer did indicate upon
20 questioning, after Advice of Rights, that he did not
21 remember doing these things, as much as he stated here today,
22 but if the children said it's true, it must be true.

23 THE COURT: Do you understand
24 that you would be entitled to a preliminary hearing at which
25 time the Court would make sure that all constitutional

1 safeguards were in place and for your benefit prior to
2 allowing those statements to be presented to a jury?

3 MR. SPENCER: Yes, sir.

4 THE COURT: And do you feel that
5 any statements made by you to any police officers during the
6 custodial setting were made freely and voluntarily by you
7 with a full understanding of your rights?

8 MR. SPENCER: Yes, sir.

9 THE COURT: Any evidence on the
10 suppression question?

11 MR. PETERS: The only evidence
12 that there was, physical evidence that had any particular
13 value was that pile of pornographic books which were brought
14 to the police by Shirley Spencer. I did not intend to
15 introduce those in my case in chief, and only intended to
16 use them should Mr. Spencer take the witness stand and in
17 some way say that he would never think of doing such a thing.
18 We have these books to use for cross examination.

19 THE COURT: Do you agree that
20 those books were brought to the authorities by your wife?

21 MR. SPENCER: I don't know
22 anything about it.

23 THE COURT: Well, you don't have
24 any basis to ask that those be suppressed, Mr. Rulli?

25 MR. RULLI: No, sir, there's no

1 legal basis.

2 THE COURT: Anything else?

3 MR. PETERS: Can I have just a
4 moment. Your Honor, there is one matter that was just
5 brought to my attention by Mr. Curtis, which I think is a
6 good idea. I don't know if the Court is aware of the
7 Harold Bernard Smith case, that was a case that came back
8 before Clark County Courts some ten years after the fact.

9 THE COURT: I had the case on
10 rebound.

11 MR. PETERS: Where an attorney
12 was being -- Basically was a federal judge who was being --
13 who had been an attorney prior, because he allegedly did not
14 allege -- on the return was that the attorney did not do a
15 competent job with regard to the mental health aspects of
16 the case.

17 I wonder if we might want to inquire further of
18 Mr. Rulli about the mental health aspects of this in terms
19 of perhaps a report from Dr. Dixon or Dr. McGovern, which
20 would indicate that Mr. Spencer was -- does not have a
21 mental disease or defect defense; make those things part of
22 the record so that in the future this doesn't come back.

23 THE COURT: Mr. Rulli.

24 MR. RULLI: Well, I think we
25 adequately covered that already on the record, Your Honor.

1 THE COURT: Well, have you
2 examined both with a respect to a defense of insanity or
3 mental incompetence?

4 MR. RULLI: Dr. Dixon related to
5 me that my client did not suffer from any mental diseases.

6 THE COURT: And is competent and
7 able to assist you in his defense?

8 MR. RULLI: Yes, sir, he's
9 cognizant of the charge against him and to the best of his
10 recollection he's been able to assist me.

11 THE COURT: Do you agree?

12 MR. SPENCER: Yes, sir.

13 MR. PETERS: Your Honor, it is
14 my understanding from plea negotiation consultations, that
15 Mr. Spencer had seen Dr. Dixon on four occasions, and
16 Dr. McGovern on one or more occasions. I'm not sure exactly
17 about that.

18 THE COURT: Is that correct?

19 MR. SPENCER: Yes, sir.

20 MR. PETERS: Dr. Dixon is known
21 to me as a -- I believe he's a forensic psychiatrist,
22 Board certified forensic psychiatrist. He's testified both
23 for the Defense and the Prosecution.

24 THE COURT: Numerous times.

25 MR. PETERS: Dr. McGovern is a

1 well-known psychologist who is also well-known and
2 remembered for his forensic work and abilities.

3 THE COURT: That's correct.

4 As far as the form here goes, paragraph 16 has a blank,
5 is there an attachment to that?

6 MR. PETERS: That's the factual
7 basis which I stated orally along with Mrs. Krause.

8 THE COURT: And you're willing,
9 Mr. Spencer, in a typical plea we have a written statement
10 in here, even in a Newton plea, that you feel the evidence
11 is such that the jury could and likely would find you guilty
12 beyond a reasonable doubt, and you're willing to accept
13 Mr. Peter's and Sharon Krause's narrative as your statement,
14 or as a statement of the State's case in paragraph 16, is
15 that correct?

16 MR. SPENCER: That's correct.

17 MR. PETERS: Okay, I request, and
18 this is somewhat unusual, that we have the court reporter
19 do a transcript of this now -- I mean not right now ----

20 THE COURT: Have it attached in
21 a week or two, is that satisfactory with you that the
22 transcript of this proceeding be attached as support for
23 paragraph 16?

24 MR. SPENCER: That's fine.

25 MR. RULLI: No objections,

1 Your Honor.

2 MR. PETERS: There are additional
3 paragraphs that are blank, paragraph 5 didn't have the
4 maximums. I stated those orally, as did the Court.

5 THE COURT: I suppose we could
6 bring that -- They're all the same.

7 MR. PETERS: Yes, 20 to life with
8 a fifty thousand dollar maximum fine.

9 With respect to paragraph No. 6, Your Honor read and
10 stated the elements to each count prior to proceeding beyond
11 paragraph 6, other than that, I think everything is in order.

12 THE COURT: All right,
13 Mr. Spencer's pleas are accepted by the Court as having been
14 made freely and voluntarily, with a full and intelligent
15 understanding of the potential consequences and that there's
16 an overwhelming factual basis for the pleas, and there is
17 sufficient evidence from which the jury could and likely
18 would find Mr. Spencer guilty of each count beyond a
19 reasonable doubt.

20 If Mr. Spencer would sign the statement, please.

21 (Mr. Spencer signs
22 statement)

23 THE COURT: The statement is
24 signed by Mr. Spencer, each attorney and myself.

25 Sentencing?

1 MR. PETERS: Your Honor, I have
2 prepared an order for a presentence report. I don't know if
3 you want to execute it or not. You do have some discretion
4 in this matter with regard to concurrent or consecutive on
5 Counts I and II with regard to 20 and up to life on both of
6 those counts as well as within the range on the remainder of
7 the counts.

8 THE COURT: I don't think a
9 presentence would serve any practical purpose myself, do you?

10 MR. RULLI: No, sir.

11 THE COURT: Are you requesting
12 one?

13 MR. RULLI: No, sir.

14 THE COURT: Presentence report
15 takes up to 40 work days. Do you request a presentence
16 report?

17 MR. PETERS: No, sir.

18 THE COURT: Do you?

19 MR. RULLI: No, sir.

20 THE COURT: Do you feel a
21 presentence report would present any facts that might
22 mitigate or aid you in the decision that I will have to make
23 at the time of sentencing?

24 MR. SPENCER: No, sir.

25 THE COURT: Okay, based upon that,

1 there's no need for one.

2 MR. PETERS: I would ask Your
3 Honor that if any mental health professionals are going to
4 be called to testify, or reports provided, we have notice of
5 those five days prior to the sentencing hearing so we can
6 prepare.

7 THE COURT: Have you thought
8 about your presentation for sentencing yet?

9 MR. RULLI: I have asked
10 Dr. Dixon to submit a written report, Your Honor, and I
11 haven't received it yet.

12 THE COURT: So how far down the
13 line do you want sentencing set?

14 I have signed an Order of Dismissal in Counts IV, V, VI,
15 VIII and XI.

16 We could probably -- I could schedule it next Thursday,
17 the 23rd of May at 1:30.

18 MR. RULLI: Your Honor,
19 Mr. Spencer requested that the Court proceed now.

20 THE COURT: I don't really have
21 enough feeling for the decision I have to make on
22 consecutive versus concurrent and versus 20 to life to
23 proceed right now. I was notified this morning there may be
24 a plea. I was called at home that there would be a plea,
25 and I simply haven't had enough time to think about those

1 major decisions in your life.

2 There's a lot of difference between 20 and life.

3 MR. SPENCER: Yes, sir, there
4 is.

5 THE COURT: For a thirty-seven
6 year old man, there's also a lot of difference in the
7 concurrent-consecutive, so I think I would need -- I would
8 like to have some input from the professionals, Dr. Dixon
9 and anybody else that has information.

10 MR. PETERS: As I said, Your
11 Honor, if they're going to be calling any witnesses, we would
12 really want to know that five days ahead of time so that we
13 can prepare to question them.

14 MR. RULLI: McGovern and Dixon
15 would be two professionals, Your Honor.

16 MR. PETERS: If they're going to
17 testify I would like to have access to them to interview
18 them, or to have their reports prior to sentencing.

19 THE COURT: That's fine. Do you
20 plan to bring them in person?

21 MR. RULLI: I don't know if they
22 will want to be here in person. I'll talk to the doctors
23 and find out.

24 MR. PETERS: We don't have five
25 days between now and next Thursday.

1 THE COURT: You could know by
2 tomorrow afternoon whether you're going to use them live or
3 not?

4 MR. RULLI: Yes.

5 THE COURT: And if you should,
6 tell them they both need to be available to Mr. Peters
7 Monday, Tuesday or Wednesday of next week for an interview.

8 MR. RULLI: All right.

9 MR. PETERS: Same if they're
10 going to submit reports.

11 THE COURT: Well, you want to
12 interview them either way?

13 MR. PETERS: I'm not sure,
14 whenever I read the reports I would know.

15 THE COURT: Well, they should be
16 available for his interview whether they're coming live or
17 by written report or both.

18 MR. PETERS: Thank you.

19 THE COURT: Thank you.

20 MR. SPENCER: Thank you, Your
21 Honor.

22 (Conclusion of Change of
23 Plea Hearing)

24 * * * * *

25

May 23, 1985

SENTENCING

THE COURT: State vs.

Clyde Ray Spencer, this comes on for sentencing. Mr. Spencer pleaded guilty on May 16, 1985, to multiple sexual offense counts.

Everybody agreed, I think, that a presentence report would serve no practical purpose, is that correct, Mr. Rulli?

MR. RULLI: Yes, Your Honor, that's what we said last time on the record.

THE COURT: In addition to the file material, and what is said today, I have a couple of other items to put on the record. I received a telegram from a number of Mr. Spencer's relatives. And I will pass that on to Mr. Spencer to read.

Also a letter provided me from Mr. Rulli by Dr. McGovern, a recognized expert in treatment of sex offenders.

Okay, State's recommendation.

MR. PETERS: Your Honor, prior to giving my recommendation, I want to give some explanation. As the Court heard during the Plea proceedings, these offenses span some period of time, at least over two summers, if not more, involving three children. These children, Your

1 Honor, have been severely traumatized by the behaviors
2 described, as well as the overt or covert threats of physical
3 violence that were made, they say, by Mr. Spencer, threats
4 directed at them to do bodily harm should they tell.

5 These children are still in the process of telling, and
6 are, all three in therapy.

7 The therapist in the reports and the mothers report
8 that the therapists are saying that it's going to be a long-
9 term process of therapy for these children before they're
10 healthy, and the reason for that is the ongoing sexual abuse.

11 Mr. Rulli and I, when we were in Sacramento, talked to
12 the therapists of Matthew Spencer and Kathryn Spencer, and
13 they indicated that the children were experiencing substantial
14 psychological and behavioral problems of the type typically
15 seen in victims of sexual abuse. There is no telling how
16 long these children will be having these problems. Perhaps
17 for the rest of their lives. But it's likely, of course,
18 that it would not have happened had it not been for the
19 inappropriate behavior of Mr. Spencer.

20 I think the community, shifting gears a little bit,
21 expects a higher degree of conduct from it's public officials.
22 During the time these crimes were committed, Mr. Spencer was
23 a police officer and acted with some higher degree of
24 authority than the average person over these children, even
25 though they were his own children and stepchildren. I think

1 the Court ought to consider that.

2 The Court also ought to consider, in deciding the
3 range of the two old code crimes, as well as the sentence to
4 be given within the standard range on the new SRA crimes,
5 the fact that the thrust of attempted plea bargain in this
6 case, which was substantial, was to attempt to get
7 Mr. Spencer into a position where he could go to Western
8 State Hospital to receive treatment.

9 He consistently refused our efforts at attempting to
10 get him in a position to do that. Those efforts even went
11 as far as an offer yesterday to discuss that by Mr. Curtis,
12 relayed through Mr. Rulli.

13 With regard to Dr. McGovern's letter and the comments
14 made regarding Mr. Spencer's potential jeopardy, should he
15 be sentenced to a prison facility by virtue of his status as
16 a former police officer, Don Gilleland, who is a local
17 parole officer who worked in the prison system for 15 years,
18 and is returning soon to work in the prison system again in
19 this state, indicated to me that the process that is followed
20 in the state when a police officer is sentenced to prison,
21 is to provide them with a new identity, transfer them to a
22 facility out of state. And I don't represent the Attorney
23 General or the prison system, but that was represented to
24 me by Mr. Gilleland as a procedure.

25 With regard, again, to the amount of time that the

1 Court is going to impose, the standard range on the SRA
2 crimes is 129 to 171 months.

3 I want to discuss, for a moment, the type of offender
4 that Mr. Spencer is, and the knowledge that I have gleaned
5 from the literature as well as my nine years experience
6 prosecuting sex offenders in terms of burn out rate.
7 Mr. Spencer appears to me to be a pedophile, that is a
8 person who is sexually attracted to children, and his
9 offenses would indicate that.

10 It's been my experience not only from reading, but
11 from consultation from some of the nation's leading experts
12 with whom I'm personally familiar, this is face to face
13 consultation, not by reading, and also by reading, that
14 pedophiles or sex offenders who are attracted to children
15 will continue to have that attraction for the rest of their
16 lives.

17 Mr. Spencer is thirty-seven years of age, has a life
18 expectancy, I would assume, of another 40 years or so.
19 Unlike rapists, or robbers, or burglars or other kinds of
20 criminals that we see in the system who may burn out at
21 forty or forty-five that Your Honor has seen before him, and
22 I have personally prosecuted a number of sex offenders who's
23 molested children when they're sixty, seventy, and a few even
24 in their eighties, so we know that this problem, unless it
25 is adequately treated and dealt with, and even sometimes then

1 will continue on over years.

2 As I said, Mr. Spencer consistently resisted any efforts
3 to cooperate with the system in terms of providing him with
4 the kind of treatment which will hopefully get him some help
5 for the future.

6 Mr. Spencer's two former wives, and the mother of these
7 children, are both in the courtroom. Deanne Spencer is here,
8 and Shirley Spencer is here, and wanted me to indicate to
9 you, as I did at the outset of my comments, that the affects
10 of these crimes is multiple crimes, not only the acts that
11 Mr. Spencer did, but the fact that he involved these
12 children with one another for his own satisfaction, caused
13 their children great harm.

14 And contrary to the comments made by Mr. Spencer's
15 relatives in the telegram where they feel he's not guilty,
16 the evidence in this case was overwhelming that he was.

17 Mrs. Krause, did you have some comments you wanted to
18 make for the record?

19 Deputy Sharon Krause of the Clark County Sheriff's
20 Office who investigated this case has spent countless hours
21 with the children or the victims.

22 DEPUTY KRAUSE: Your Honor, I
23 appreciate the opportunity to address you. Both of the
24 mothers of these children would have liked to have done that
25 themselves, but not only has this been extremely traumatic

1 for the children, it is for the mothers. Nothing that the
2 Court or the system could do would provide me the opportunity
3 to assure these mothers that those children are going to
4 grow up and be healthy, normal human beings. As sad as our
5 system is, there is nothing in the system that provides
6 anything but minimal, financial assistance, and so not only
7 are the mothers having to share the burden of dealing with
8 the anger and the trauma and confusion their children have,
9 they're also going to be the ones who are responsible for
10 dealing with them for maybe forever.

11 I think both of them would like you to know they're
12 feeling a lot of anger and animosity, and it's understandably
13 so. But Mr. Spencer has robbed them of their -- The
14 children of their God given right to the innocence and trust
15 the children have, and we would hope that you would take
16 that into consideration at the time you provide sentence.

17 I have spent a number of hours with all three children
18 involved, and am doing what I can to assist. But it's
19 extremely difficult for me when I can't tell them even their
20 father isn't admitting that he did that.

21 That's all I have, thank you.

22 MR. PETERS: Your Honor, based
23 upon those things that were said by myself and Mrs. Krause,
24 and after consultation with Mr. Curtis of our office, we
25 feel that under the circumstances, it is our position that

1 Mr. Spencer should be sentenced to the maximum the law
2 allows the Court within the standard range. We're not asking
3 for an exceptional sentence, but we're asking that you
4 sentence him to the top of the standard range and that is
5 171 months.

6 On the SRA crimes, we're also asking that you sentence
7 him to life on both of the pre-SRA crimes to run consecutive
8 with one another, and consecutive to the SRA offenses.

9 THE COURT: What's the Parole
10 Board's obligation if he gets life terms?

11 MR. PETERS: It's my understanding
12 that the Parole Board is going to dissolve in a couple of
13 years. So what the effect of those two life sentences are,
14 I really don't know. I don't know that anybody knows the
15 answer to that.

16 THE COURT: What's the present
17 practice?

18 MR. PETERS: Well, I can tell
19 you that under the former act, my experience with consecutive
20 is that it did have an effect. I can remember one man in
21 particular, Mr. Claflin, who was sentenced to seven
22 consecutive and received a 28 year minimum term. It had a
23 substantial effect on it.

24 THE COURT: But as far as life
25 goes, they can still give him the minimum which would be the

1 same as the minimum they give him under 20 years?

2 MR. PETERS: They could do that.
3 They could do that, but our point is that at this level we
4 need to do our job to protect society, and that is give the
5 system the opportunity to keep Mr. Spencer for as long as it
6 deems necessary. If he gets treated in the system, and gets
7 out sooner, I think that's better for everybody. If he
8 doesn't, at least by sentencing him to life, the Correction
9 system will have the option to keep him for life.

10 THE COURT: Mr. Rulli.

11 MR. RULLI: Your Honor, initially
12 I would like to make a motion under the Sexual Offender
13 Statute of the SRA that Your Honor send Mr. Spencer to
14 Western State Hospital for an evaluation. I feel that the
15 statute can be interpreted to allow the Court to send him to
16 Western State for that evaluation, and I'd make that motion
17 at this time.

18 THE COURT: All right, that
19 motion is denied on the basis that the Court has no authority
20 since it's standard sentencing range exceeds six years.
21 Neither option A or option B are available to Mr. Spencer.
22 The clear intent of the Legislature is that anyone that
23 receives a term of greater than six years is not eligible
24 for treatment.

25 MR. RULLI: Your Honor, in

1 response to Mr. Peters' comments when I interviewed -- Sat
2 in on the interview with the children in the therapist's
3 office, I got the impression from the therapist that the
4 children were coming along. That they were being more open
5 about this and as they open and discuss it more that they
6 were feeling better about the whole situation. I think both
7 therapists for the children in California indicated that.
8 I haven't had an opportunity to talk only to the therapist
9 in Vancouver regarding Matthew Hansen, and regarding
10 Matthew Spencer and Kathryn Spencer. That's the impression
11 they gave when I interviewed them, Your Honor.

12 Mr. Peters, I think, has made a great point about
13 whether the efforts that his office went to gave Mr. Spencer
14 a benefit here. Your Honor, in my conversations with my
15 client, I do feel that he's sorrowful for what he's done,
16 whether he remembers the incident or not, I don't know.

17 The psychiatrists I talked to, they didn't know either.
18 The fact that he has not come out and admitted to what he's
19 done, whether he can remember that or not, I don't know if
20 that's something you can take into consideration, whether
21 you should or not.

22 Dr. Dixon couldn't bring Mr. Spencer to remember what
23 happened after four sessions with him, and I'm not in a
24 position as an attorney to try to bring him to the point
25 of remembering either. I don't know if he does remember.

1 Dr. McGovern states it may be an amnesia state. I don't
2 know that, but my point is that the Prosecutor is saying
3 because you haven't admitted, we're going to give you the
4 maximum penalty possible. Whether they're doing that because
5 of the offenses or not, Your Honor has sat on several
6 specific cases before, and I know that you've given out all
7 kinds of sentences in regards to this type of crime. My
8 question is, is the Prosecuting Attorney's Office making an
9 example of Mr. Spencer one, because he won't come out and
10 admit to what he did and, secondly, because he was a police
11 officer in the community.

12 I have heard in seminars, Your Honor, that sex offenders
13 are of no special status or occupation. They're Little
14 League managers, they're teachers, businessmen, and they can
15 be possibly officers, so the fact that this man was a police
16 officer and a sex offender, I don't think that should be of
17 significance.

18 True, he was trusted with the responsibility to the
19 community to uphold the laws, but if he has a problem with
20 a sex -- I don't know what you call it, a deviant problem,
21 if that be the correct word, then maybe that's something
22 that he should have dealt with, but the fact that he's an
23 officer and has this problem, I don't think that should be
24 the basis for punishment more severely for what he's done.

25 I feel that the request for consecutives, Your Honor,

3

1 is not authorized by case law. State v. Johnson at
2 96 Wn.2d, the law has been in the State of Washington that
3 where there are several charges arising out of the same
4 transaction that the sentencing must run concurrent.

5 Now, two charges that we're talking about here, Counts I
6 and II in the Information, were alleged to have occurred
7 during the summer of 1983. There is nothing in the record
8 that Your Honor can go by to say they were not arising out
9 of the same transaction. So, therefore, Your Honor has to,
10 I would think, conclude that they did and would have to
11 sentence concurrently instead of consecutively.

12 State v. Johnson, Your Honor, is the law in our state
13 and it's being followed on all questions of consecutive or
14 concurrent. The fact that Your Honor has a discretion to
15 impose between 129 to 171 months, which works out to 171,
16 14 years and 3 months, I feel that would be a significant
17 incarceration penalty for anyone to do.

18 If he gets credit for the good time, you're still
19 looking at 10 years, Your Honor, incarceration on this
20 offense.

21 I have had other serious offenders before you on first
22 offense people. I have never known you to sentence somebody
23 back to back on something like this.

24 We have had first degree armed robbers who repeated,
25 and you have given them 20 and 30. I know there's been

1 cases that's been serious assaults where you have given the
2 low range of the 20 to life scale instead of the maximum.

3 So, I'm concerned that if there is other factors that
4 should be taken into consideration here, the factors that I
5 have mentioned, the background of my client, I think it
6 would be unfair for the Court to consider that in going
7 consecutive to the SRA. Thank you, Your Honor.

8 THE COURT: Are you talking about
9 Counts I and II?

10 MR. RULLI: Yes, sir.

11 THE COURT: There are two
12 different victims.

13 MR. RULLI: I realize that.

14 THE COURT: The transaction rule
15 wouldn't apply in my opinion.

16 Mr. Spencer.

17 MR. SPENCER: Yes, sir.

18 THE COURT: Any comments?

19 MR. SPENCER: To bring up one,
20 regarding the so-called deals that Mr. Peters offered me.
21 It required that I provide him with information that I don't
22 have. If you don't have it, you can't provide. If that's
23 a stipulation as far as the sentencing goes, my hands are
24 tied.

25 He failed to mention to you there were requirements for

1 my taking his deals.

2 THE COURT: Well, I don't know
3 too much about that.

4 MR. PETERS: There may have been
5 information provided to the Prosecutor that indicated that
6 there was more to this than presently known.

7 MR. SPENCER: That's their
8 assumption. Unfortunately, I can't provide the information
9 he wanted. I want the Court to recognize that it was
10 basically his deals. I couldn't fulfill what he wanted.

11 THE COURT: Any comments?

12 MR. PETERS: Only that what
13 Mr. Spencer's relating to you came up within the last week.
14 There were offers made with regard to treatment long before
15 the information that he's referring to was even known to us.
16 So to the extent of discussions that have occurred during
17 the last week, what he's saying is accurate.

18 Prior to the last week, however, the same offers were
19 made with no knowledge of those other behaviors.

20 MR. RULLI: Well, Your Honor,
21 that's not accurate either because when the offer was made
22 for three counts and being sent to Western State, before my
23 client had an opportunity to accept the offer, the
24 information about these other matters had come up and it
25 was revoked. So I don't think it's fair to say he refused

1 to go to Western State either.

2 MR. SPENCER: I was in the
3 process of completing a test also, Your Honor.

4 THE COURT: Well, going to
5 Western State would have been futile anyway without an
6 admission. We all know that. People here should know that
7 Western State can not work with somebody that won't admit.
8 Neither can Dr. McGovern.

9 MR. PETERS: That -- Our
10 discussion was that he would have to admit in order to go
11 to Western State.

12 MR. RULLI: My client realized
13 that and that was why he was being treated by Dr. Dixon,
14 Your Honor.

15 THE COURT: Well, we have already
16 covered the fact that he's not eligible to go to Western
17 State by virtue of the term being in excess of the six years.

18 If there were treatment within the prison facilities,
19 of course, hopefully if there ever is, he would be eligible
20 for that, you come out of that successfully, you may be a
21 candidate for some type of early release.

22 But, a lot of comments were made here comparing apples
23 and oranges, and my record with respect to the treatment
24 effects of sex offenders is very consistent. Those that do
25 not admit get the maximum term, because that's the only thing

1 I can do in good conscience because we know, those who deal
2 in this, you, Mr. Rulli, Mr. Peters and myself, all the
3 people that deal in this regularly, all of the experts say
4 without treatment these people will reoffend.

5 So to me it's a very easy decision. No treatment,
6 maximum, that's my responsibility to the community.

7 MR. RULLI: Maximum on the SRA's?

8 THE COURT: Maximum on everything
9 because I can't have Mr. Spencer or any other sex offender
10 back in the community knowing he's going to reoffend, and
11 I always recommend the maximum-minimum in every sex case I
12 have sent up without an admission, or somebody that failed
13 at Western State, I recommend the minimum term be the
14 maximum term.

15 I have also always added a rider to that If there's
16 treatment within the system and he receives it and completes
17 the treatment, then he should be reconsidered. But until
18 that time, they have to keep him locked up otherwise he's
19 going to go out and have more victims like these kids. If
20 the choice is between the sex offender and the kids, the
21 sex offender loses. It's as simple as that.

22 I think anybody with a conscience, that's the only
23 decision a person can come to because you will reoffend.
24 Everybody tells us that. And, you know, Mr. Rulli talked
25 about assaults and robberies, and things like that. Well,

1 that's, you know, just throw that out the window, it has
2 nothing to do with this type of case. Sex offenders, the
3 pedophile type are in a class or category by themselves.
4 There is no burn out, they reoffend.

5 Mr. Peters is correct, we have had, I don't know about
6 in the eighties, but I know I have had a sex offender
7 pedophile in the high seventies.

8 MR. SPENCER: No consideration
9 for Dr. McGovern's ----

10 THE COURT: Well, I can't send
11 you to Western State.

12 MR. SPENCER: I know, but the
13 fact in the case is that it's possible that I had amnesia.

14 THE COURT: Well, that isn't
15 going to help in the future. If you continue to have the
16 amnesia, assuming that's correct, when you get out, you're
17 going to go back and reoffend somewhere, sometime, someplace.

18 Now, the fact that you're a police officer has nothing
19 to do with my position in this case, because if you go back
20 and check the cases, you'll find out that I'm very consistent
21 in this.

22 If you violated a child or somebody when you were in the
23 line of duty, then I think what Mr. Peters said is very
24 appropriate. I think in those situations the public does
25 demand a higher standard, maybe they demand it across the

1 board. But I know we had a case a few years ago where one
2 of our juvenile detention officers, not in the facility, but
3 outside of the facility, got mixed up with some of the kids
4 that he handled in the facility, not this type -- not kids
5 this young, but teenage kids, and I gave him the maximum
6 because in that case, he violated his trust.

7 But, I mean, you violated probably a greater trust, that
8 is the trust of your own family, that isn't because you're
9 a police officer because we know Mr. Rulli already said that.
10 we see sex offenders in Little League coaches, businessmen,
11 mill workers, they're probably in every line of life
12 including judges somewhere. So, you know, the fact that
13 you're a police officer really has no bearing on my decision.

14 The only decision is that I must protect the kids in
15 the future, and you're dangerous to them without treatment.
16 Therefore, Count I, you will be sentenced to the Department
17 of Corrections for the maximum term of life. Count II,
18 Department of Corrections, for the maximum term of life.
19 And on the SRA cases, the maximum term of 171 months, all of
20 those terms to run consecutively.

21 And having known you, been associated with you in the
22 past, I do that with kind of a heavy heart because I know
23 that you have probably suffered greatly yourself, but
24 nothing compared to what the kids have, and probably will
25 suffer. I simply can't take a chance that you would do that

1 to somebody else.

2 MR. SPENCER: I would ask that
3 you take into consideration the incarceration out of state,
4 if possible.

5 THE COURT: Well, I certainly
6 would support that, although I don't have any ability to
7 put that into effect. But if that's the policy, I would
8 certainly support it.

9 MR. PETERS: Your Honor, I may
10 say that I approached this whole case with the same heavy
11 heart that you do, because I know Mr. Spencer before as well.
12 However, I will do whatever I can in terms of interceding
13 with the Department of Corrections to -- In fact, I'll call
14 them today and advise them. Do you want to have him go
15 tomorrow, or do you want to delay it a little bit so they
16 know that he's coming and can ----

17 THE COURT: If you can make a
18 phone call, I would go with what they recommend.

19 MR. PETERS: I'll call them
20 today. We'll need to come back for signing.

21 THE COURT: I think you need
22 protection. I don't think you should be treated any
23 differently in prison because you're a police officer, and
24 if it takes out of state placement to guarantee your
25 security, I hope that the people that are responsible do

1 that.

2 MR. RULLI: Come back for
3 signing tomorrow, Your Honor?

4 THE COURT: Well, if it's the
5 State's suggestion that he stay here a while, then we'll
6 come back tomorrow. If the State says send him up, then we
7 should come back today so that he can be on the chain today.

8 MR. PETERS: Do you want to set
9 it for today then assuming ----

10 THE COURT: Whenever you're
11 ready, 4 o'clock?

12 MR. PETERS: Sure.

13 THE COURT: Thank you.

14 (Sentence Hearing
15 concluded)

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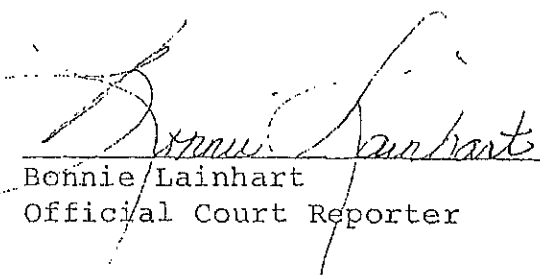
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C E R T I F I C A T E

STATE OF WASHINGTON)
 : ss.
County of Clark)

I, Bonnie Lainhart, Official Court Reporter of the Superior Court of the State of Washington, do hereby certify that I reported in stenotype the testimony and proceedings had upon the hearing of this cause, previously captioned herein, before the Honorable Thomas Lodge, Judge; that I thereafter had my stenotype notes reduced to typewriting, under my direction; and, that the foregoing transcript, pages 1 to 65, both inclusive, constitutes a full, true and accurate record of all testimony adduced and proceedings had upon the hearing of said cause, and of the whole thereof.

Witness my hand as Official Court Reporter
this 16th day of September, 1985.



Bonnie Lainhart
Official Court Reporter